

REMARKS

Status Summary

The Office Action has been noted and its contents carefully studied. Pending claims 1, 3-16, 18, 20, and 22-24 are rejected in this Application. By this Amendment, claims 1, 3, 5, and 10-15 are amended. No new matter is added. Reconsideration of the application as amended and based on the remarks set forth herein below is respectfully requested.

Specification

The specification is objected to on page 5 of the Office Action as allegedly failing to provide proper antecedent basis for the claimed subject matter. Applicant submits that the claims as amended find full support in the specification in at least paragraphs [0016] and [0039] of the as-filed specification, as published. Reconsideration is respectfully requested.

Claim Rejections

Regarding rejections under 35 U.S.C. § 101

Claims 10-12 are rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 10 has been amended to recite “A computer-readable storage medium storing a set of program instructions installed on and executed by a computer, the program instructions comprising a method of marketing a product, comprising” within the body of the claim, thus embodying the recited method within a concrete device and which provides a concrete and tangible result.

Applicant asserts that claim 10 as amended is now in compliance with the statutory requirements of 35 U.S.C. § 101. Claims 11-12 each depend from claim 10 and inherit the amendments of the independent claim (and have been themselves amended). As such, applicant asserts that each of these claims is in compliance with 35 U.S.C. § 101 for the same reasons as independent claim 10. Reconsideration is respectfully requested.

Regarding rejections under 35 U.S.C. § 112

Claims 1, 3-16, 18, 20, and 22-24 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Office Action on page 10 states that "found shelf space" is not described in the specification. Applicant has amended claims 1, 10, and 13. Claims 3-9, 11-12, 14-16, 18, 20, and 22-24 each depend from one of claims 1, 10, and 13 and inherit the amendments of the independent claim. As such, applicant asserts that the claims, as amended, fully support the enablement of the terms encompassed within the claims. Reconsideration is respectfully requested.

Claims 1, 3-9, 13-16, 18, 20 and 22-24 are rejected under 35 U.S.C. § 112, first paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner contends that the various numbered "subsystem" claim elements are means plus function limitations and contends that the written description fails to clearly link or associate the disclosed structure, material, or acts to the claimed functions such that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed functions. Applicant has amended claims 1, 3, 5, 13, and 15. Claims 3-9, 14-16, 18, 20 and 22-24 each depend from one of claims 1, 10, and 13 and inherit the amendments of the independent claim. As such, applicant asserts that the claims, as amended, fully support the enablement of the terms encompassed within the claims. Moreover, at least Figures 3-4, paragraphs [0032-0036]; Figures 5-6, paragraphs [0044-0048 and 0050-0053]; and Figure 7-9, paragraphs [0055-0057] fully support the claimed subject matter and describe the claimed functions, and that one of skill in the art would readily recognize what structure, material, or acts perform the claimed functions. Reconsideration is respectfully requested.

Regarding rejections under 35 U.S.C. § 103

Claims 1, 3-16, 18, 20, and 22-24 are rejected under 35 U.S.C. § 103(a) based on US Patent No. 7,340,419 to Walker et al. (hereinafter "Walker") in view of US Patent No. 5,029,098

to Levasseur et al. (hereinafter “Levasseur”), and further in view of “FIELDS AND FULMER” (Non-patent literature cited in form PTO-892, item U) (hereinafter “Fields”). These rejections are respectfully traversed.

The examiner found applicant's previous response (filed October 5, 2009), to the August 4, 2009 Office Action to be fully persuasive to overcome the examiner's previous rejection under 35 U.S.C. § 103(a) based on Walker and Fields. However, the examiner has now asserted a new ground of rejection under 35 U.S.C. § 103(a) based on Walker in view of Levasseur and further in view of Fields.

The examiner concedes that the Walker and Fields references, either taken together or in combination, do not provide the disclosure necessary to render claims 1, 10, and 13 obvious (see Office Action page 5). To remedy the deficiencies of Walker and Fields the examiner looks to Levasseur. However, as will be made clear in the following arguments, Levasseur fails to cure the deficiencies of Walker and Fields.

With regard to claims 1, 10, and 13 the examiner contends that Levasseur teaches *a supplier ensuring that there is available shelf space in a vendor premise*, and the examiner references the abstract, Figs. 10, 13, 16, 19, 22, 25, and column 7, lines 59-69 of Levasseur for support of this assertion. Levasseur relates generally to a vend space allocation monitoring system that uses historical sales data (demand of vendible products) of the vend space in a vending machine over a period of time, and monitors whether the vend space allocation configuration is consistent with selection demand norms. Levasseur focuses on allocation of products within a vending machine to maximize its sales by making sure that the most demanded products are available to the customers. Levasseur's system records the sales data within a vending machine over a period of time and based on this data the storage space may be rearranged and reallocated by the vending machine's service personnel to maximize sales or minimize missed sales (caused by insufficient product quantities). In Levasseur, the service personnel, employed by the vending machine's owner, may rearrange and reallocate the storage

space at the time of servicing based on the recorded historical data as captured by the vending machine during that service cycle. In Levasseur, the vending machine and the products belong to one owner, thus there is no outside competition (i.e., suppliers) for the vending machine storage space. The arrangement and allocation (as well as any rearrangement and reallocation), of the vending machine storage space is strictly an internal matter for the owner of the vending machine and the products.

In Levasseur, there is no need to search for available storage space since the location of all the storage space is known to the service personnel (owner). This storage space is limited to a specific vending machine. Nowhere in Levasseur does it disclose or teach, *inter alia*, applicant's claimed element of a supplier ensuring that there is available shelf space in a vendor's premise and for the suppliers and vendors to negotiate for the selected, desired available shelf space. In Levasseur, there is only a single entity, i.e., the owner of the vending machine, and while there may be a service person for the vending machine authorized by the owner to service/stock the machine; such service person would not be considered "a supplier" as claimed in the present invention. Further, as there is no supplier there is no negotiation for the selected, desired available shelf space between the suppliers and vendors.

Looking at the abstract of Levasseur as referenced by the examiner, the abstract only generally discloses a historical database that provides historical sales data information of a vending machine that may be used by an authorized service personnel employed by the vending machine owner to reconfigure the vend space allocation to be consistent with selection demand norms. Nowhere in the abstract does it disclose or teach applicant's claim of a supplier ensuring that there is available shelf space in a vendor premise and for the suppliers and vendors to negotiate for the selected, desired available shelf space as claimed in the present application. Further, with regard to Figs. 10, 13, 16, 19, 22, 25 as referenced by the examiner, these figures all merely show data tables indicating product availability status for the various products at the time the vending machine is serviced. Nowhere in these figures, or their related descriptive text, does it disclose or teach applicant's claim of a supplier ensuring that there is available shelf space

in a vendor premise and for the suppliers and vendors to negotiate for the selected, desired available shelf space. Moreover, with regard to column 7, lines 59-69 as referenced by the examiner, nowhere does it disclose or teach applicant's claim of a supplier ensuring that there is available shelf space in a vendor premise and for the suppliers and vendors to negotiate for the selected, desired available shelf space. Rather, Levasseur at column 7, lines 59-69 describes a product storage allocation configuration of a vending machine and product availability and sales history during a service cycle of the vending machine.

The examiner further contends that Levasseur discloses a) accepting products from suppliers for display, b) accepting competing products from other suppliers for display in proximity to similar products, c) negotiations between vendors and suppliers for display space, and d) the value of limited physical display spaces. Applicant respectfully disagrees. Nowhere does Levasseur disclose, teach, or even mention accepting products from suppliers for display, accepting competing products from other suppliers for display in proximity to similar products, or negotiating between vendors and suppliers for display space. Levasseur involves a single entity, i.e. the owner of the vending machine, and does not include the aspects claimed by applicant of marketing shelf space to suppliers, ability of suppliers to ensure there is available shelf space available at a vendor's premises, and the ability to negotiate for such selected, desired available shelf space between the supplier and vendor

For at least the reasons stated in applicant's Office Action response filed October 5, 2009 Walker and Fields do not provide the disclosure necessary to render claims 1, 10, and 13 obvious, and further, for at least the reasons stated hereinabove Levasseur does not provide the disclosure necessary to remedy the shortcomings in the Walker and Fields references. Therefore, Walker in view of Levasseur and further in view of Fields, either taken individually or in combination, do not provide the disclosure necessary to render claims 1, 10, and 13 obvious. Reconsideration and allowance are respectfully requested.

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Claims 3-9, 11-12, 14-16, 18, 20, and 22-24 are likewise allowable by virtue of their dependency on one of claims 1, 10, or 13. Reconsideration and allowance of the remaining dependent claims are respectfully requested. Applicant therefore submits that in light of the amendments herein all pending claims are patentable over the prior art of record, and reconsideration and allowance of all pending claims are accordingly requested.

CONCLUSION

Should there be any minor issues outstanding in this matter, the examiner is respectfully requested to telephone the undersigned attorney. Early passage of the subject application to issue is earnestly solicited.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any underpayment or credit any overpayment associated with this filing to Deposit Account Number 50-3976. If an extension of time for this paper is required, petition for extension is herewith made.

Respectfully Submitted,

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